

RESPONSE TO RESTRICTION REQUIREMENT
ATTORNEY DOCKET NO. 4034.003

APPLICATION NO. 10/725,659
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APR 25 2007**REMARKS**

In the Office Action mailed March 30, 2007, ("Restriction Requirement"), Applicant has been requested to select one of the following groups for prosecution:

Group I, claims 12, 13(in part), 14, 16-19 & 23, drawn to a cosmetic composition containing electric carriers where the solid electret material is a polymerized fluorocarbon, classified in 514/725;

Group II, claims 12, 13(in part), 15-19 & 23, drawn to a cosmetic composition containing electric carriers where the solid electret material is a ceramic, classified in 424/66;

Group III, claims 12, 13(in part), 16-19 & 23, drawn to a cosmetic composition containing electric carriers where the solid electret material is a non-fluorinated polymer, classified in 424/78.31;

Group IV, claims 20 (in part) & 21-22, drawn to a method for improving absorption of nutrients and/or active agents into the skin by applying to the skin a cosmetic composition containing electric carriers where the solid electret material is a polymerized fluorocarbon, classified in 514/458;

Group V, claims 20 (in part) & 21-22, drawn to a method for improving absorption of nutrients and/or active agents into the skin by applying to the skin a cosmetic composition containing electric carriers where the solid electret material is a ceramic, classified in 424/677; and

Group VI, claims 20 (in part) & 21-22, drawn to a method for improving absorption of nutrients and/or active agents into the skin by applying to the skin a cosmetic composition containing electric carriers where the solid electret material is a non-fluorinated polymer, classified in 514/772.4.

The Restriction Requirement asserts that Groups I, II & III are related to Groups IV, V & VI, respectively, as product and process of use. The Restriction Requirement asserts that there are many other products that could be used with the claimed method to achieve improved absorption of nutrients into the skin.

The Restriction Requirement also asserts that Groups I, II & III are unrelated and that Groups IV, V & VI are unrelated. The Restriction Requirement asserts that the Groups are unrelated because they have different structures, resulting in different reactivity, binding affinity, mechanism, stability, polarity, bioavailability, efficacy, solubility and modes of action. The Examiner asserts that the search for one Group will not lead to information about the others.

By this Response Applicant elects Group (Species) I with traverse and withdraws Groups (Species) IV-VI. Applicant respectfully requests examination of Groups (Species) I, II and III as part of genus claims 12 and 23.

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Applicant believes that the present product claims are drawn to a genus with three species and should be analyzed under MPEP 806.04. When properly framed, the restriction requirement is between three species (polymerized fluorocarbons, ceramics, and non-fluorinated polymers) of a genus. Claims 12 and 23 are drawn to the relevant genus: "cosmetically acceptable, solid electret materials with an induced dipole moment and a permanent electric dipole field with a field strength of $500\text{-}10^7 \text{ Vm}^{-1}$."

As set forth in MPEP 806.04, two or more species are related if they are disclosed as connected in at least one of design (e.g. structure or method of manufacture), operation (e.g. function or method of use), or effect. In the present case, the electric dipole field *operates* to bring about the desired *effect* of improved skin cells absorbing capacity. The Species are related because each of the species is connected to the others in at least operation and effect because

37 C.F.R. §1.146 guides the determination of whether restriction of related species is appropriate. Rule 1.146 provides that:

In the first action on an application containing a generic claim to a generic invention (genus) and claims to more than one patentably distinct species embraced thereby, the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application.

The critical inquiry under Rule 1.146 is whether the current claims are directed to a reasonable number of species. In this case, the necessary search is for "cosmetically acceptable, solid electret materials with an induced dipole moment and a permanent electric dipole field with a field strength of $500\text{-}10^7 \text{ Vm}^{-1}$." Applicant believes that the relevant search would be for electret materials with these electric dipole properties, not the much broader search described in the Restriction Requirement. Thus, Applicant respectfully assert that Species I, II and III

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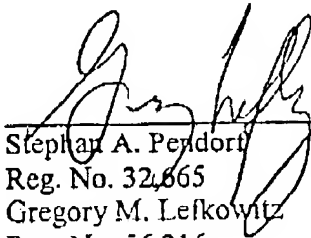
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constitute a reasonable number of species. Accordingly, Applicant respectfully requests examination of Species I, II and III.

No fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 50-0951. Should the Examiner believe that anything further is necessary, the Examiner is respectfully requested to contact Greg Lefkowitz at 561-671-3624 (direct line).

Respectfully submitted,

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